

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 08-598V

Filed: November 24, 2009

NOT TO BE PUBLISHED

DEVEN CLAYTON, by his mother,
TRAMELLA CLAYTON

Petitioner,

v.

SECRETARY OF THE DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Respondent.

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Encephalopathy; Seizure disorder;
Regression of development, gastro-
intestinal issues and autism as
sequelae; MMR; HIB; Varicella;
Pneumococcal

Lisa Roquemore, Broker & Associates, P.C., for petitioners

Traci Patton, U.S. Department of Justice, Washington, D.C., for respondent

DECISION^{1 2}

GOLKIEWICZ, Chief Special Master.

On October 23, 2009, the undersigned issued a Fact Ruling and Order, which directed petitioner to produce an expert opinion regarding causation in this matter. On November 20, 2009, petitioner filed a Motion for a Decision Dismissing this Petition. In her motion, petitioner stated

¹ This document constitutes a final “decision” in this case pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of the Court shall enter judgment in accord with this decision.

² The undersigned intends to post this decision on the United States Court of Federal Claims’s website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). As provided by Vaccine Rule 18(b), each party has 14 days within which to request redaction “of any information furnished by that party (1) that is trade secret or commercial or financial information and is privileged or confidential, or (2) that are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). Otherwise, “the entire” decision will be available to the public. Id.

that, in light of the Fact Ruling, “it would be ill advised to proceed with the Petition.”

Originally, petitioner filed the Petition on behalf of her son, Deven, on August 19, 2008. The Petition alleges that immunizations given to Deven on October 3, 2005,³ caused Deven to suffer an encephalopathy, manifesting as a seizure disorder with regression of development, gastrointestinal issues, and autism as sequelae. Pet at 8-9. As stated in the undersigned’s Fact Ruling and Order, filed October 23, 2009, factual information provided by affidavit was absent from the contemporaneous medical records. A fact Hearing was held on October 14, 2009, to address the factual discrepancies regarding petitioner’s claims.

At the fact Hearing, petitioner, Deven’s father and a family friend offered testimony consistent with what was provided by affidavit. Fact Ruling and Order at 1. In the Fact Ruling and Order, filed October 23, 2009, the undersigned rejected the witness testimony that alleged Deven suffered an immediate, severe reaction to his immunizations, which was absent from or in conflict with Deven’s contemporaneous medical records. Ultimately, the undersigned found that the contemporaneous medical records were to be relied upon for the factual information in this case. Fact Ruling and Order at 4. Petitioner was directed to produce a medical expert report opining that the vaccine caused Deven’s injuries, based upon the factual information contained in his medical records. Id.

As stated previously, petitioner filed a Motion for a Decision Dismissing this Petition on November 20, 2009. Respondent was contacted and does not oppose petitioner’s motion. As the undersigned detailed in the Fact Ruling, the medical records were to be relied upon in this matter and it was incumbent upon petitioner to produce a supportive medical opinion. The Act at 42 U.S.C. § 300aa-13(a) provides that the special master “may not make a finding based on the claims of a petitioner alone, unsubstantiated by medical records or by medical opinion.” The Petition remains unsupported by either medical records or medical opinion. The undersigned has no option but to **grant** petitioner’s unopposed motion and **dismiss** this case for want of proof.

The Clerk shall enter judgment accordingly.

IT IS SO ORDERED.

s/ Gary J. Golkiewicz
Gary J. Golkiewicz
Chief Special Master

³ On October 3, 2005, Deven received his MMR, HIB, Varicella and Pneumococcal immunizations.